

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
W.R. GRACE & CO., .
et al., . USX Tower - 54th Floor
. 600 Grant Street
. Pittsburgh, PA 15219
Debtors. .
. September 17, 2009
. 8:36 a.m.
.

TRANSCRIPT OF PLAN CONFIRMATION HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP
By: DAVID BERNICK, ESQ.
LISA G. ESAYIAN, ESQ.
JANET BAER, ESQ.
200 East Randolph Drive
Chicago, IL 60601

For the Asbestos Caplin & Drysdale, Chartered
Creditors Committee: By: PETER LOCKWOOD, ESQ.
One Thomas Circle, NW
Washington, D.C. 20005

For the Future Orrick, Herrington & Sutcliffe, LLP
Claimants By: ROGER FRANKEL, ESQ.
Representatives: JONATHAN GUY, ESQ.
Washington Harbour
3050 K Street, N.W.
Washington, D.C. 20007

Audio Operator: Cathy Younker

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (CONT'D):

For W.R. Grace: W.R. Grace & Co.
By: RICHARD C. FINKE, ESQ.
5400 Broken Sound Boulevard NW
Boca Raton, FL 33487

For W.R. Grace: W.R. Grace & Co.
By: MARK SHELNITZ, ESQ.
7500 Grace Drive
Columbia, MD 21044

For the Libby Claimants: Lewis, Slovak & Kovacich, P.C.
By: MARK KOVACICH, ESQ.
725 Third Avenue North
Great Falls, MT 59401

For Fireman's Fund/
Allianz: Stevens & Lee
By: JOHN D. DEMMY, ESQ.
1105 North Market Street, 7th Floor
Wilmington, DE 19801

For CNA: Goodwin Procter, LLP
By: MICHAEL GIANNOTTO, ESQ.
Exchange Place
Boston, MA 02109-2881

Cohn Whitesell & Goldberg, LLP
By: DANIEL C. COHN, ESQ.
101 Arch Street
Boston, MA 02110

For Arrowwood: Wilson, Elser, Moskowitz, Edelman,
& Dicker, LLP
By: CARL J. PERNICONE, ESQ.
150 East 42nd Street
New York, NY 10017

For BNSF Railway: Pepper Hamilton, LLP
By: LINDA CASEY, ESQ.
3000 Two Logan Square
Philadelphia, PA 19103

For Maryland Casualty: Connelly Bove Lodge & Hutz, LLP
By: JEFFREY WISLER, ESQ.
The Nemours Building
1007 North Orange Street
Wilmington, DE 19899

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APPEARANCES (Cont'd):

For Anderson Memorial
Hospital:

Kozyak, Tropin & Throckmorton, PA
By: JOHN W. KOZYAK, ESQ.
2525 Ponce de Leon, 9th Floor
Miami, Florida 33134

For MCC & Zurich:

Eckert Seamans
By: EDWARD D. LONGOSZ, ESQ.
1747 Pennsylvania Avenue, NW
Suite 1200
Washington, DC 20006

Wiley Rein, LLP
By: RICHARD A. IFFT, ESQ.
1776 K Street NW
Washington, DC 20006

For Ford, Marrin,
Esposito, Witmeyer
& Gleser, LLP:

Ford, Marrin, Esposito, Witmeyer &
Gleser, LLP
By: ELIZABETH M. DeCRISTOFARO, ESQ.
Wall Street Plaza, 23rd Floor
New York, NY 10005-1875

For Kaneb Pipe Line
Operating Partnership,
LP:

Fulbright & Jaworski
By: STEVE PEIRCE, ESQ.
300 Convent Street, Suite 2200
San Antonio, TX 78205-3792

For Travelers:

Simpson Thacher & Bartlett LLP
By: MINDY LOK, ESQ.
425 Lexington Avenue
New York, NY 10017

For State of Montana
Dept. of Environmental
Quality:

Womble Carlyle Sandridge & Rice
By: FRANCIS MONACO, ESQ.
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801

For AXA Belgium:

Tucker Arensberg, P.C.
By: MICHAEL A. SHINER, ESQ.
1500 One PPG Place
Pittsburgh, PA 15222

For Kaneb Pipe Line
Operating Partnership,
LP:

Gilbert & Renton, LLC
By: ROBERT GILBERT, ESQ.
344 North Main Street
Andover, MA 01810

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APPEARANCES (Cont'd):

For Garlock Sealing
Technologies:

Robinson, Bradshaw & Hinson, P.A.
By: GARLAND CASSADA, ESQ.
RICHARD WOLF, ESQ.
101 North Tryon Street
Suite 1900
Charlotte, NC 28246

For Sealed Air:

Skadden, Arps, Slate, Meagher & Flom,
LLP
By: DAVID TURETSKY, ESQ.
J. GREGORY ST. CLAIR, ESQ.
One Rodney Square
Wilmington, DE 19801

For the Unsecured
Creditors' Committee:

Strook & Strook & Lavan
By: ARLENE KRIEGER, ESQ.
KENNETH PASQUALE, ESQ.
180 Maiden Lane
New York, NY 10038

For Continental
Casualty Co.:

Goodwin Procter, LLP
By: DANIEL GLOSBAND, ESQ.
Exchange Place
Boston, MA 02109-2881

For Arrowwood:

Wilson Elser Moskowitz Edelman
& Dicker, LLP
By: CARL PERNICONE, ESQ.
150 East 42nd Street
New York, NY 10017

For One Beacon
Ins. Co., Geico,
Seaton Ins. Co.
& Republic Ins. Co:

Drinker Biddle & Reath LLP
By: MICHAEL F. BROWN, ESQ.
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

For the PD Committee:

Speights & Runyan
By: DANIEL SPEIGHTS, ESQ.
ALAN RUNYAN, ESQ.
DAVID ROSENDORF, ESQ.
200 Jackson Avenue, East
Hampton, SC 29924

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APPEARANCES (Cont'd):

For the Debtors: Kirkland & Ellis, LLP
By: THEODORE FREEDMAN, ESQ.
DEANNA D. BOLL, ESQ.
Citigroup Center, 153 East 53rd St.
New York, NY 10022

For Fresenius: McDermott, Will & Emery
By: NATHAN F. COCO, ESQ.
227 West Monroe Street
Chicago, IL 60606

For the Future
Claimants Orrick, Herrington & Sutcliffe,
LLP
Representatives: By: PERI N. MAHALEY, ESQ.
RICHARD WYRON, ESQ.
Washington Harbour
3050 K Street, N.W.
Washington, D.C. 20007

For Asbestos Property
Damage Claimants: Scott Law Group
By: DARRELL SCOTT, ESQ.
1001 East Main Street, Suite 500
Sevierville, TN 37864

For Allstate Insurance: Cuyler Burk, LLP
By: ANDREW K. CRAIG, ESQ.
Parsippany Corporate Center
Four Century Drive
Parsippany, NJ 07054

For the Libby Claimants: Landis, Rath & Cobb, LLP
By: JAMES S. GREEN, JR., ESQ.
919 Market Street, Suite 1800
Wilmington, DE 19899

For the Equity
Committee: Kramer Levin Naftalis & Frankel
By: DAVID E. BLABEY, JR., ESQ.
919 Third Avenue
New York, NY 10022

For the Bank Lenders: Landis, Rath & Cobb, LLP
By: RICHARD COBB, ESQ.
919 Market Street, Suite 1800
Wilmington, DE 19899

J&J COURT TRANSCRIBERS, INC.

APPEARANCES (Cont'd):

For Official Committee of Asbestos Property Claimants: Richardson Patrick Westbrook & Brickman, P.C.
By: EDWARD J. WESTBROOK, ESQ.
KATIE McELVEEN, ESQ.
174 East Bay Street
Charleston, SC 29401

For the Debtors: Kirkland & Ellis, LLP
By: ELLI LEIBENSTEIN, ESQ.
200 East Randolph Drive
Chicago, IL 60601

For the Debtors: Kirkland & Ellis, LLP
By: CHRISTOPHER GRECO, ESQ.
CLEMENT YEE, ESQ.
Citigroup Center, 153 East 53rd St.
New York, NY 10022

TELEPHONIC APPEARANCES:

For Committee of Asbestos Personal Injury Claimants: Campbell & Levine
By: MARK T. HURFORD, ESQ.
800 North King Street
Suite 300
Wilmington, DE 19701

For the Debtors: Pachulski, Stang, Ziehl & Jones
By: JAMES O'NEILL, ESQ.
919 North Market Street, 17th Floor
Wilmington, DE 19899-8705

For Fireman's Fund Insurance Co.: Crowell & Moring LLP
By: LESLIE A. DAVIS, ESQ.
MARK PLEVIN, ESQ.
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

For Federal Insurance Company: Cozen O'Connor
By: JACOB C. COHN, ESQ.
1900 Market Street
Philadelphia, PA 19103

For National Union Fire Insurance Co.: Zeichner Ellman & Krause, LLP
By: MICHAEL DAVIS, ESQ.
575 Lexington Avenue
New York, NY 10022

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TELEPHONIC APPEARANCES (Cont'd):

For Fireman's Fund:	Stevens & Lee By: MARNIE SIMON, ESQ. 600 College Road East, Suite 4400 Princeton, NJ 08540
For Various Claimant Firms:	Stutzman, Bromberg, Esserman & Plifka By: DAVID J. PARSONS, ESQ. 2323 Bryan Street, Suite 2200 Dallas, TX 75201
For Morgan Stanley Senior Funding, Inc.:	Katten Muchin Roseenman, LLP By: JEFF FRIEDMAN, ESQ. MERRITT PARDINI, ESQ. 575 Madison Avenue New York, NY 10022-2585
For Morgan Stanley Senior Funding, Inc.:	Edwards Angell Palmer Dodge, LLP By: ROBERT CRAIG MARTIN, ESQ. 919 N Market St. Wilmington, DE 19801-3023
For Serengeti:	Vinson & Elkins, LLP By: ARI BERMAN, ESQ. Trammell Crow Center 2001 Ross Avenue, Suite 3700 Dallas, TX 75201
For Scott Company:	Vorys, Sater, Seymour & Pease, LLP By: TIFFANY COBB, ESQ. 52 East Gay Street Columbus, OH 43216
For Official Committee of Asbestos Property Damage Claimants:	Dies & Hile, LLP By: MARTIN DIES, ESQ. 1601 Rio Grande, Suite 330 Austin, TX 78701
	LECG By: ELIZABETH DEVINE, ESQ. 1725 Eye Street NW, Ste 800 Washington, DC, 20006

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TELEPHONIC APPEARANCES (Cont'd):

For the Property
Damage Committee:

Bilzin Sumberg Baena Price &
Axelrod LLP
By: MATTHEW KRAMER, ESQ.
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131

For the Property
Damage Committee:

Bilzin Sumberg Baena Price &
Axelrod LLP
By: SCOTT BAENA, ESQ.
JAY SAKALO, ESQ.
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131

For the Bank Lenders:

Paul Weiss Rifkind Wharton &
Garrison, LLP
By: MARGARET PHILLIPS, ESQ.
REBECCA ZUBATY, ESQ.
ANDREW N. ROSENBERG, ESQ.
1285 Avenue of the Americas
New York, NY 10019

For the Bank Lenders:

Crowell & Moring LLP
By: TACIE YOON, ESQ.
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

For National Union Fire
Insurance Co.:

Zeichner Ellman & Krause, LLP
By: ROBERT GUTTMANN, ESQ.
575 Lexington Avenue
New York, NY 10022

For the Future
Claimants
Representatives:

Orrick, Herrington & Sutcliffe,
LLP
By: DEBRA FELDER, ESQ.
JOSHUA CUTLER, ESQ.
Washington Harbour
3050 K Street, N.W.
Washington, D.C. 20007

For Federal Insurance
Company:

Cozen O'Connor
By: ILAN ROSENBERG, ESQ.
1900 Market Street
Philadelphia, PA 19103

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TELEPHONIC APPEARANCES (Cont'd):

For Official Committee of Asbestos Personal Injury Claimants:	Anderson Kill & Olick By: ROBERT M. HORKOVICH, ESQ. 1251 Avenue of the Americas New York, NY 10020-1186
For Grace Certain Cancer Claimants:	Montgomery, McCracken, Walker & Rhoads, LLP By: NATALIE D. RAMSEY, ESQ. 300 Delaware Avenue, Ste. 750 Wilmington, DE 19801
For David T. Austern, the Future Claimants' Representative:	Phillips, Goldman & Spence, P.A. By: JOHN C. PHILLIPS, ESQ. 1200 North Broom Street Wilmington, DE 19806 By: DAVID T. AUSTERN
For Allstate Insurance:	Cuyler Burk, LLP By: STEFANO CALOGERO, ESQ. Parsippany Corporate Center Four Century Drive Parsippany, NJ 07054
For the Asbestos Creditors Committee:	Ferry Joseph & Pearce, P.A. By: THEODORE TACCONELLI, ESQ. 824 Market Street, Suite 19899 Wilmington, DE 19899
For Ford, Marrin, Esposito, Witmeyer & Gleser:	Ford, Marrin, Esposito, Witmeyer & Gleser By: SHAYNE SPENCER, ESQ. Wall Street Plaza New York, NY 10005
For Official Committee of Unsecured Creditors:	Duane Morris, LLP By: MICHAEL LASTOWSKI, ESQ. 1100 North Market Street, Suite 1200 Wilmington, DE 19801-1246

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Return

TELEPHONIC APPEARANCES (Cont'd):

For Official Committee
of Asbestos Property
Damage Claimants:

Brandi Law Firm
By: THOMAS J. BRANDI, ESQ.
TERENCE D. EDWARDS, ESQ.
44 Montgomery St., Suite 1050
San Francisco, CA 94104

Lieff, Cabraser, Heimann & Bernstein
By: ELIZABETH J. CABRASER, ESQ.
Embarcadero Center West
275 Battery Street, Suite 3000
San Francisco, CA 94111

For Official Committee:
of Asbestos Property
Damage Claimants:

Riker, Danzig, Scherer, Hyland &
Perretti, LLP
By: TARA MONDELLI, ESQ.
CURTIS PLAZA, ESQ.
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962

For the Libby Claimants:

Cohn, Whitesell & Goldberg, LLP
By: CHRISTOPHER M. CANDON, ESQ.
101 Arch Street
Boston, MA 02110

For the Libby Claimants:

Landis, Rath & Cobb, LLP
By: KERRI K. MUMFORD, ESQ.
919 Market Street, Suite 1800
Wilmington, DE 19899

For Everest Reinsurance
Company, et al.:

Marks, O'Neill, O'Brien & Courtney LLP
By: BRIAN L. KASPRZAK, ESQ.
JOHN D. MATTEY, ESQ.
913 North Market Street
Suite 800
Wilmington, DE 19801

For Murray Capital
Management

Murray Capital Management, Inc.
By: MARTI MURRAY

For Normandy Hill
Capital, LLP:

Normandy Hill Capital, LLP
By: MATTHEW CANTOR

For ZAI Claimants
& various law firms:

Hogan Firm Attorneys at Law
By: DANIEL K. HOGAN, ESQ.
1311 Delaware Avenue
Wilmington, DE 19801

J&J COURT TRANSCRIBERS, INC.

TELEPHONIC APPEARANCES (Cont'd):

For the U.S. Trustee:	Office of the U.S. Trustee By: DAVID KLAUDER, ESQ. 844 King Street, Suite 2313 Wilmington, DE 19801
For Arrowwood Indemnity Co.:	Bifferato Gentilotti LLC By: GARVAN McDANIEL, ESQ. 800 North King Street Wilmington, DE 19801
For AXA Belgium:	Mendes & Mount By: ANNA NEWSOM, ESQ. 750 Seventh Avenue New York, NY 10019
For Dow Jones News Wires:	Dow Jones News Wires By: PEG BRICKLEY
For Hartford Financial Service Group:	Wilmer Wilmer Cutler Pickering Hale & Dorr, LLP By: MELANIE R. DRITZ, ESQ. 399 Park Avenue New York, NY 10022
For Travelers Casualty Surety Company:	Morris Nichols Arsht & Tunnell, LLP By: MATTHEW B. HARVEY 1201 N. Market Street PO Box 1347 Wilmington, DE 19899-1347
For Asbestos Property Damage Claimants:	Pryor Cashman, LLP By: RICHARD LEVY, ESQ. 410 Park Avenue New York, NY 10022
For David T. Austern, Future Claimants' Representative:	Lincoln International, LLC By: JOSEPH RADECKI
For Travelers Casualty:	Morris Nichols Arsht & Tunnell, LLP By: ANN C. CORDO, ESQ. 1201 North Market Street, 18th Floor Wilmington, DE 19899

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TELEPHONIC APPEARANCES (Cont'd):

For the PD Committee:	Speights & Runyan By: MARION FAIREY, ESQ. 200 Jackson Avenue, East Hampton, SC 29924
For Garlock Sealing Technologies:	Morris James LLP By: BRETT FALLON, ESQ. 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801
For Halcyon Asset Management:	Halcyon Asset Management By: JOHN GREENE
For W.R. Grace:	Onex Credit Partners By: STUART KOVENSKY
For The Hartford:	Wilmer Cutler Pickering Hale & Dorr LLP By: NANCY MANZER, ESQ. 1875 Pennsylvania Avenue NW Washington, DC 20006
For the Debtors:	Kirkland & Ellis, LLP By: RAFAEL VALDES, ESQ. 200 East Randolph Drive Chicago, IL 60601
For the Asbestos Creditors Committee:	Caplin & Drysdale, Chartered By: JAMES WEHNER, ESQ. One Thomas Circle, NW Washington, D.C. 20005

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Return

I N D E X

	<u>PAGE</u>
<u>WITNESS FOR THE PLAN PROPONENTS</u>	
DAVID AUSTERN	
Direct Examination by Mr. Guy	46
Cross Examination by Mr. Monaco	69
Cross Examination by Mr. Kovacich	71
Cross Examination by Mr. Brown	76
Cross Examination by Mr. Speights	77
Further Cross Examination by Mr. Monaco	82
Redirect Examination by Mr. Guy	83
Recross Examination by Mr. Bernick	84
JUDGE ALEXANDER SANDERS	
Direct Examination by Mr. Rich	97
Cross Examination by Mr. Speights	100
Cross Examination by Mr. Brown	119
Cross Examination by Mr. Bernick	121
Redirect Examination by Mr. Rich	121
PAMELA ZILLY	
Direct Examination by Mr. Bernick	122
 <u>EXHIBITS</u>	
PP-633 Document (also denominated as PDFCR-1)	<u>ID.</u> 91
	<u>EVD.</u> 97

Austern - Cross/Monaco

69

1 MR. GUY: Thank you, Your Honor. Nothing further,
2 Your Honor.

3 THE COURT: Anyone else on the Plan Proponents' side?
4 Mr. Monaco?

5 CROSS EXAMINATION

6 BY MR. MONACO:

7 Q Good morning, Mr. Austern.

8 A Good morning.

9 Q My name is Frank Monaco, I represent the State of Montana.
10 I have a couple questions for you. You stated in your
11 testimony that you're familiar with the TDP and that it's in
12 the position to pay all present and future asbestos claimants,
13 correct?

14 A Yes.

15 Q Now, the TDP operates on a first in, first out basis,
16 correct?

17 A It does.

18 Q And payments are made in that manner as well, correct?

19 A There are some exceptions to that, but generally, yes.

20 Q Now, you're aware that there are a number of indirect
21 asbestos claimants -- let me rephrase that. There are a number
22 of claimants who have been put in the subclass of indirect
23 asbestos personal injury claimants, correct?

24 A Yes.

25 Q Okay, and that would include my client?

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Return

Austern - Cross/Monaco

70

1 A Yes.

2 Q And as you're aware, my client has claims for contribution
3 indemnification.

4 A Okay.

5 Q Now, the TDP acknowledges, I think, and I'll just to speed
6 things along, under Sections 4.1 and 4.3 of the TDP that there
7 is uncertainty in connection with the value of the assets, the
8 amount of liabilities?

9 A Yes.

10 Q Now, in light of all this, first in, first out and
11 uncertainty, is it possible that the trust could run out of
12 funds before it is positioned to pay contribution
13 indemnification claims?

14 A I don't believe that's likely.

15 Q Why is that, sir?

16 A Because from the very first, the trustees, and I daresay
17 the trustees' constituents, are going to look very closely at
18 the rate at which claims are filed, the valuation of the claims
19 that are being paid, and I might say the future queue of those
20 claims, which is to say there's always a backlog and that
21 backlog are filed claims, and there are methods to very quickly
22 evaluate what those claims are even though they are not in FIFO
23 queue for payment.

24 Q Okay. But aren't you really talking about direct asbestos
25 personal injury claims?

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Return

Austern - Cross/Kovacich

71

1 A Well, I'm talking about all claims.

2 Q But the way the trust is set up, isn't it more likely that
3 direct asbestos claimants are going to get paid first just
4 given the nature of their claims?

5 A I don't know that to be true. I think prepetition claims
6 will get paid first, but I don't believe that subsequent
7 personal injury claims will be.

8 Q Okay. So the fact that prepetition direct asbestos claims
9 more likely would get paid first and given the uncertainty, is
10 it possible, sir, that the Trust may not have sufficient funds
11 to pay contribution indemnifications claims which are
12 established later?

13 A At the risk of future liability to me, I'm not doing my
14 job if that happens.

15 Q So your testimony is there is no possibility of that
16 happening?

17 A Well, of course there is a possibility, but I don't
18 believe it is likely to happen.

19 Q Okay. Thank you, sir.

20 CROSS EXAMINATION

21 BY MR. KOVACICH:

22 Q Good morning, Mr. Austern. Mark Kovacich on behalf of
23 Libby Claimants. I have just a couple of quick questions for
24 you. You testified that Grace is contributing funds to the
25 plan on behalf of prepetition settled insurers, right?

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Return

Austern - Cross/Kovacich

72

1 A Yes.

2 Q There's nothing in the plan that says that, is there?

3 MR. LOCKWOOD: Objection.

4 THE COURT: Your microphone's not on, Mr. Lockwood.
5 On what basis?

6 MR. LOCKWOOD: Objection, Your Honor. He's asking
7 the witness in effect to tell him every particular provision in
8 the plan. I don't know that he's established a foundation that
9 the witness has that much detailed knowledge of the plan.

10 THE COURT: Well, the witness can answer if he knows.
11 If he doesn't, he knows to say he doesn't know, I'm sure. You
12 may answer, Mr. Austern.

13 A I don't know where in the plan that would be contained.

14 Q You're not aware of any language in the plan that says
15 Grace's contribution is on behalf of the prepetition settled
16 insurers, are you, sir?

17 A Not in that exact language, no.

18 Q Under the terms of the settlement that was reached, if the
19 plan were modified to remove 524(g) protection for the
20 prepetition settled insurers, would Grace be entitled to pay
21 less money into the plan?

22 MR. GUY: Objection, Your Honor. Calls for
23 speculation.

24 MR. LOCKWOOD: I join the objection.

25 MR. KOVACICH: I can try to ask a better question.

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